

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 12-CV-0295-CVE-TLW
)	
BALTAZAR D. PEREZ et al.,)	
)	
Defendants.)	

OPINION AND ORDER

This matter comes on for consideration of defendant Baltazar D. Perez’s Motion to Dismiss (Dkt. # 27). Perez argues that he is unable to prepare a defense because the documents he needs are in the custody of the Tulsa County Sheriff’s Office (Sheriff’s Office), and plaintiff’s claims should be dismissed due to violations of Perez’s constitutional rights. Dkt. # 27, at 3. Plaintiff responds that it is unclear whether Perez is seeking to have the case dismissed under Fed. R. Civ. P. 12 or 37 but, whatever the basis for Perez’s motion, plaintiff has provided Perez a copy of all documents in the custody of the Sheriff’s Office and the motion to dismiss is moot.

On May 23, 2012, the United States of America filed this case to reduce to judgment tax assessments against Perez and to foreclose on federal tax liens. Dkt. # 2. Plaintiff alleges that Perez owes approximately \$1.4 million in unpaid taxes, interest, and penalties for the tax years of 2003, 2005, 2006, 2007, and 2008. On September 11, 2012, Perez filed an answer stating that his taxes were not “properly prepared,” and that he intended to submit corrected tax forms and work with plaintiff to adjust the amount of taxes owed. Dkt. # 21, at 1-2. The Court entered a scheduling order, inter alia, setting a discovery cutoff of April 15, 2013 and a non-jury trial on July 8, 2013. Dkt. # 25.

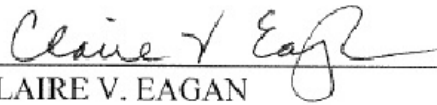
Shortly after the case was filed, Perez's home was searched pursuant to a search warrant and drugs, drug paraphernalia, and firearms were seized. In addition to drugs and firearms, the incident report prepared after the search states that "various paperwork" was seized during the search. Dkt. # 27, at 12. In Tulsa County District Court, Perez was charged with possession of a controlled drug in the presence of a minor and possession of drug paraphernalia. State of Oklahoma v. Baltazar Diaz Perez, Tulsa County District Court Case No. 2012-2544. In federal court, Perez was charged by complaint with possession of a firearm with an obliterated serial number. United States of America v. Baltazar Diaz Perez, 12-mj-137-PJC (N.D. Okla.). The criminal charges in state and federal court were dismissed, and the State of Oklahoma released the property seized during the search of Perez's home. However, the United States had placed a hold on the property and defendant was not permitted to take possession of the seized property.

Defendant has filed a motion to dismiss on the ground that he is unable to prepare a defense, because the evidence he needs is being held by the Sheriff's Office and he has been denied access to the evidence. Dkt. # 27, at 2. The motion to dismiss does not state under which Federal Rule of Civil Procedure defendant seeks relief and he does not cite a single case in attempt to show that his constitutional rights have been violated. Defendant states that he has made "informal" discovery requests to plaintiff, and he has not received a response to his requests. Id. at 3. Plaintiff responds that it has not received any discovery requests from Perez, but it has voluntarily provided Perez a copy of all documents in the possession of the Sheriff's Office. Dkt. # 28, at 1. The Court has reviewed Perez's motion and finds no basis to dismiss the claims against Perez. Perez's motion contains no legal authority that would require the dismissal of plaintiff's claims, and he has received copies of the documents to which he was allegedly denied access. Perez did not submit written

requests for production to the government, and he has no basis to complain about any delay in receiving documents from plaintiff. Contrary to his assertions, he has not shown that “the United States has made it impossible for him to proceed,” and his motion to dismiss should be denied. Dkt. # 27, at 3.

IT IS THEREFORE ORDERED that defendant Baltazar D. Perez’s Motion to Dismiss (Dkt. # 27) is **denied**.

DATED this 4th day of March, 2013.



CLAIRE V. EAGAN
UNITED STATES DISTRICT JUDGE